

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS - EASTERN DIVISION**

FIRST GOVERNMENT LEASE CO.)	
and PAUL GRAVER)	
)	
Plaintiffs,)	
vs.)	Case No. 16-cv-07251
)	
FRED BRINER and BRINER LAW OFFICES,)	
)	
Defendants.)	

COMPLAINT

Plaintiffs, FIRST GOVERNMENT LEASE COMPANY ("First Government") and PAUL GRAVER, by and through their attorneys KONICEK & DILLON, P.C., for their Complaint against Defendants FRED BRINER and BRINER LAW OFFICES, (collectively "Defendants"), state the following:

NATURE OF THE ACTION

1. This is a legal malpractice action based upon the Defendants' breach of their duty of professional care in the drafting and review of documents in a lease-purchase transaction that Plaintiffs entered into with the City of Alexander, Arkansas. Plaintiffs allege that the Defendants were negligent in the drafting and review of the first mortgage note and lien related to this transaction that resulted in the transaction later being challenged as legally void under Arkansas law, for which Plaintiffs were required to pay professional costs to defend the suit and ultimately paying a settlement of \$103,000.00.

JURISDICTION AND VENUE

2. This Court has original jurisdiction over the parties pursuant to 28 U.S.C. § 1332(a)(1) based on the diversity of citizenship between the parties and the amount in controversy exceeding \$75,000.

3. Venue is proper in this district because the Defendants transacted business with Illinois citizens and it was foreseeable that the Defendants would be sued in Illinois.

PARTIES

4. Plaintiff, First Government Lease Company, is an Illinois entity with its principal place of business in Northfield, Illinois.

5. Plaintiff, Paul Graver is a citizen of the state of Illinois.

6. Defendant Fred Briner is a citizen of the state of Arkansas.

7. Defendant Briner Law Office is an Arkansas entity, with its principal place of business at 422 N. Main Street, Benton, Arkansas. It is a citizen of Arkansas.

FACTS COMMON TO ALL COUNTS

8. Plaintiffs, First Government and Graver are in the business of providing financing to municipalities such as Alexander, Arkansas.

9. Defendant Fred Briner was and is at all times relevant licensed to practice law in the State of Arkansas.

10. Defendants Fred Briner and Briner Law Offices are in the business of the practice of law and the provision of legal services in the State of Arkansas.

11. In 2007, Plaintiffs entered into an attorney-client relationship with Defendants, wherein, Defendants would provide legal services for Plaintiffs related to the consummation of a Lease Purchase Agreement with the City of Alexander, Arkansas.

12. Pursuant to the Retainer Agreement, Defendants undertook to represent Plaintiffs in the transaction with the City of Alexander wherein an attorney-client relationship existed that gave rise to an affirmative duty on the part of Defendants to exercise that level of care a reasonably careful lawyer would exercise in the same or similar circumstances.

13. As a part of their representation of Plaintiffs, the Defendants were to provide legal advice and draft the necessary legal documents to effect the transaction with the City of Alexander.

14. On or about November 29, 2007, Plaintiffs entered into a Lease Purchase Agreement with the City of Alexander, Arkansas, wherein Plaintiffs loaned the City the principal amount of \$350,000.00. *See* Note, attached hereto as **Exhibit A**.

15. This Lease Purchase Agreement was accompanied by a commercial real estate mortgage which provided that the interest rate of 9.90% per annum. *See* Commercial Real Estate Mortgage, attached hereto as **Exhibit B**.

16. The City of Alexander made approximately fifty-six (56) payments on the Lease Purchase Agreement to Plaintiffs.

17. On or about May 7, 2012, Plaintiffs executed an assignment of the Municipal Lease Purchase Agreement to First State Bank.

18. The City of Alexander made approximately eleven (11) payments to First State Bank.

19. In March of 2013, the City of Alexander ceased making payments on the Lease Purchase Agreement and the commercial mortgage.

20. The City of Alexander ceased paying on the indebtedness, asserting that the interest rate of 9.90% per annum provided for in the commercial real estate mortgage related to the Lease Purchase Agreement was illegal under Arkansas law and because the Lease Purchase Agreement contained a non-appropriation clause, which was also contrary to Arkansas law.

21. On October 2, 2013, First State Bank filed a Petition for Declaratory Judgment and Supplemental Relief against the City of Alexander and Graver seeking to hold that the Lease Purchase Agreement was valid and enforceable. *See* Petition for Declaratory Judgment and Supplemental Relief, attached hereto as **Exhibit C**.

22. On March 8, 2016, the parties in the declaratory judgment action entered into a settlement agreement, wherein *inter alia*, Plaintiff Graver agreed to pay \$103,000.00 to First State Bank in settlement of claims against him. *See* Settlement Agreement and Mutual Release, attached hereto as **Exhibit D**.

COUNT I Legal Malpractice

23. Plaintiffs restate and re-allege paragraphs 1 through 22 as though fully set forth herein.

24. Defendants Fred Briner and Briner Law Offices owed a professional duty of care to Plaintiffs as a result of the attorney-client relationship entered into in 2007.

25. As a part of their engagement by Plaintiffs, the Defendants were responsible for the review and drafting of the relevant documents to the Lease Purchase Agreement with the City of Alexander including the note and commercial real estate mortgage.

26. Defendants' responsibility included ensuring that all the terms and conditions of those documents complied with Arkansas law.

27. Those documents, for which Defendants were responsible, were the same documents at issue in the declaratory judgment action. *See Exhibit C.*

28. The Defendants' failure to identify and draft the pertinent clauses in the documents in compliance with the law of the State of Arkansas precipitated the City of Alexander ceasing payment on its obligations and the subsequent declaratory judgment action.

29. Defendants' breached their affirmative duty of care pursuant to the attorney-client relationship in one or more of the following ways:

- (a) Failed to properly review the lease-purchase and related documents to ensure compliance with Arkansas law;
- (b) Failed to draft the lease purchase agreement documents, including the note and mortgage in compliance with Arkansas law; and
- (c) Failed to adequately advise Plaintiffs as to the limitations of the lease-purchase transaction with municipalities under Arkansas law.

30. Because of the failure on the part of Defendants to properly draft and review the Lease Purchase Agreement documents in preparation for the lease-purchase transaction with the City of Alexander, Plaintiffs were ultimately forced to defend a declaratory judgment action and pay a settlement for the improper documents that were contrary to Arkansas law.

31. As a direct and proximate result of the Defendants' breach of their affirmative duty, Plaintiffs were damaged in the following ways:

- (a) Plaintiffs incurred legal bills in defending declaratory judgment action;
- (b) Plaintiffs were required to pay \$103,000.00 to resolve the declaratory judgment action through settlement; and
- (c) the full amount paid to Defendants for their provision of legal services in the preparation and drafting of the lease-purchase documents that were legally defective.

WHEREFORE, Plaintiffs First Government Lease Co. and Paul Graver pray for a judgment in their favor and against Defendants Fred Briner and Briner Law Offices in the amount in excess of \$75,000.00, plus court costs.

First Government Lease Co. and Paul Graver.

/s/ Amir R. Tahmassebi
Attorney for Plaintiffs

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